

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Crim. No. 03-_____
	:	
	:	
v.	:	18 U.S.C. §§ 371 & 2;
	:	15 U.S.C. §§ 78j(b) and 78ff;
	:	17 C.F.R. § 240.10b-5
LAWRENCE FRANSEN	:	

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

COUNT ONE

(Conspiracy to Commit Securities Fraud, Bank Fraud and Mail Fraud,  
and to Make False Statements to Auditors)

**Suprema Specialties, Inc.**

1. At all times relevant to this Information, Suprema Specialties, Inc. was a New York corporation with its corporate headquarters, and a processing plant, located in Paterson, New Jersey (“the Paterson plant”). Suprema had three wholly-owned subsidiaries at which it manufactured and processed cheese for sale: Suprema Specialties West, Inc., located in Manteca, California; Suprema Specialties Northwest, Inc., located in Blackfoot, Idaho; and Suprema Specialties, Northeast, Inc., located in Ogdensburg, New York (collectively referred to herein as “Suprema” or “the Company”). Suprema was engaged in the business of manufacturing, processing and distributing a variety of purportedly all natural cheese products throughout the United States and elsewhere. Suprema’s products consisted primarily of mozzarella, ricotta and provolone cheeses and grated and shredded parmesan and romano cheeses. Suprema sold its

products to supermarkets and other retail establishments; food service industry distributors, which, in turn, sold the products to restaurants, hotels, and caterers, among others; and food manufacturers, which used the products in the preparation of prepared foods, such as frozen pizza.

2. In or about April 1991, Suprema held an initial public offering, issuing approximately 1,000,000 shares of common stock. Suprema's common stock was publicly traded on the over-the-counter market beginning in approximately April 1991. Commencing in or about March 1993 through in or about March 2002, Suprema's common stock was traded under the symbol "CHEZ" on the National Association of Securities Dealers Automatic Quotation National Market System (the "NASDAQ"), an electronic securities market administered by the National Association of Securities Dealers.

3. On or about December 19, 2001, Suprema's Chief Financial Officer ("CFO") and Controller each resigned. On or about December 21, 2001, Suprema issued a press release announcing the resignations and stating that Suprema was undertaking a review of its prior reported financial results. On that same day, the NASDAQ suspended trading on Suprema stock; trading on Suprema stock never resumed. On or about February 24, 2002, Suprema filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, which was converted to a Chapter 7 liquidation shortly thereafter. On or about March 1, 2002, NASDAQ delisted Suprema's stock. Suprema and its subsidiaries are now defunct entities.

### **The Defendant and His Companies**

4. At all times relevant to this Information, LNN Enterprises (“LNN”) was a sole proprietorship, with its principal place of business located in Corona, California. At all times relevant to this Information, LNN was in the business of buying and selling cheese products.

5. At all times relevant to this Information, Wall Street Cheese, LLC (“WSC”) was a Limited Liability Company created under the laws of the State of California and had offices in Corona, California. At all times relevant to this Information, WSC was in the business of buying and selling cheese products.

6. At all times relevant to this Information, defendant LAWRENCE FRANSEN was a resident of Corona, California. FRANSEN was the founder and president of LNN, and a 25% owner of WSC. At all times relevant to this Information, FRANSEN controlled and ran both LNN and WSC.

### **The Securities and Exchange Commission and Suprema’s Required Public Disclosures**

7. At all times relevant to this Information, the Securities and Exchange Commission (“SEC”) was an independent agency of the United States government which was charged by law with preserving honest and efficient markets in securities.

8. In order to sell securities to members of the public and maintain public trading of its securities in the United States, Suprema was required to comply with provisions of the federal securities laws, including the Securities Exchange Act of 1934 (“the Act”), and rules and regulations promulgated thereunder, that were designed to ensure that a company’s financial and business information was accurately recorded and disclosed to members of the investing public. Among other things, these laws and regulations required Suprema to: (a) file with the SEC, prior

to the sale of its shares to the public, a registration statement that described the Company's business and included financial statements audited by an independent accountant; (b) file with the SEC annual financial statements audited by an independent accountant on Form 10-K and unaudited interim quarterly financial statements on Form 10-Q that disclosed its financial condition and the results of its business operations; (c) report non-recurring material events affecting the Company's business and financial condition; (d) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the Company's transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") and other applicable criteria; and (e) make and keep books, records, and accounts that accurately and fairly reflected the Company's business transactions.

9. At all times relevant to this Information, the rules and regulations of the SEC required that a company whose stock was publicly traded prepare and disclose annual financial statements that had been audited by an independent public accountant. At all times relevant to this Information, Suprema employed the services of an independent accountant, namely BDO Seidman, to, among other things, perform an audit of the required annual financial statements. An audit by an independent public accountant included examining, on a test basis, evidence supporting the amounts and disclosures in a company's financial statements. One of the tests that an accountant performed to substantiate a company's accounts receivable was to request that the company's customers verify that the customers truly owed the amount reflected as an account receivable in the company's books and records. This procedure is known as "audit confirmation."

### **Suprema's Bank Loans**

10. At all times relevant to this Information, Suprema was a party to a revolving loan agreement with a consortium of banks (referred to subsequently as “the bank(s)”) as a means of financing its business (the “revolving loan agreement”). Most of the banks that were parties to the revolving loan agreement were insured by the Federal Deposit Insurance Corporation.

11. The revolving loan agreement provided that Suprema could borrow up to eighty percent of its eligible accounts receivable (that is, amounts it was owed by customers for sales to those customers) and up to forty percent of the book value of certain of its inventory. The revolving loan agreement also provided, among other things, that Suprema could not borrow against any invoice that was outstanding for more than ninety days and could not borrow on an invoice unless the product reflected on that invoice had, in fact, been shipped and delivered to the customer.

12. The revolving loan agreement also required Suprema to furnish the bank(s) on a monthly basis with an accounts receivable aging report and an accounts payable aging report, which listed the outstanding receivables and payables respectively by date and customer, and an inventory report, which included a complete aggregate dollar value of all inventory held by Suprema for the previous month. The revolving loan agreement further required Suprema to provide a Borrowing Base Certificate to the bank(s) each month listing the eligible receivables and inventory. Under the revolving loan agreement, the Borrowing Base Certificate had to include a certification by an officer of Suprema that the information provided to the bank(s) regarding its receivables and inventory was true and correct in all material respects.

13. To obtain funds under the revolving loan agreement, Suprema was required to deliver a Borrowing Notice to the bank(s), which set forth the amount of the loan requested and the requested borrowing date. Under the revolving loan agreement, each Borrowing Notice constituted a warranty and representation by Suprema that the accounts receivable against which it was borrowing under the Borrowing Notice were genuine, represented bona fide transactions completed in the ordinary course of business and were in all respects what they purported to be.

14. The revolving loan agreement further required that Suprema submit to the bank(s) all quarterly reports on Form 10-Q and all annual reports on Form 10-K substantially contemporaneously with their filing with the SEC and that the financial statements, as incorporated in those SEC filings, be prepared in accordance with GAAP.

15. Due to Suprema's seeming financial success, the bank(s) increased Suprema's credit line dramatically over the years. In March 2000, Suprema could borrow up to a maximum of \$85 million. In December 2000 and September 2001, the credit line was increased to \$111 million and \$130 million respectively. By October 2001, Suprema could borrow up to a maximum of \$140 million, a more than 60% increase in just over eighteen months.

### **The Conspiracy**

16. From in or about 2000 through in or about January 2002, in the District of New Jersey and elsewhere, defendant

LAWRENCE FRANSEN

and others known and unknown, did knowingly and willfully combine, conspire, confederate and agree with others to commit offenses against the United States, that is:

a. to use and employ, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 ("Rule 10b-5"), in connection with the purchase and sale of Suprema securities, by (i) employing devices, schemes, and artifices to defraud; (ii) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon investors, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, and Rule 10b-5;

b. to devise a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, to place and cause to be placed in authorized depositories for mail matter, and to take and receive therefrom, matters and things to be sent and delivered by the Postal Service and by commercial interstate carriers, and to knowingly cause to be delivered by mail and such carriers according to the directions thereon and at the places at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, contrary to Title 18, United States Code, Section 1341;

c. to execute a scheme and artifice to defraud a financial institution, and to obtain money and property owned by and under the custody and control of a financial institution by means of false and fraudulent pretenses, representations, and promises, contrary to Title 18, United States Code, Section 1344; and

d. to, directly and indirectly, (a) make and cause to be made materially false and misleading statements; and (b) omit to state, and cause others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading to accountants in connection with (i) audits and examinations of the financial statements of Suprema, which was an issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934, and which were required by law to be made; and (ii) the preparation and filing of documents and reports required to be filed with the SEC, contrary to Title 17, Code of Federal Regulations, Section 240.13b2-2 and Title 15, United States Code, Section 78ff.

### **The Objects of the Conspiracy**

17. It was a principal object of the conspiracy to falsely inflate Suprema's sales by creating false invoices and other documents designed to make it appear as if Suprema had sold and shipped product to WSC, one of the companies controlled by FRANSEN, and at least one other company not named as a defendant herein (collectively referred to as "the Fransen customer accomplices"), when it had not.

18. It was a further object of the conspiracy to record those bogus sales in Suprema's books and records and to present the fraudulently inflated sales and accounts receivables in



documents submitted to the bank(s), to the SEC and to the investing public in order to obtain more money from the bank(s) pursuant to the revolving loan agreement and to make Suprema appear more successful and profitable to the bank(s) and the investing public than it actually was.

18. It was a further object of the conspiracy to disguise and conceal the fraud by orchestrating sham circular transactions between Suprema, the Fransen customer accomplices and related companies to make it appear as if Suprema's fraudulent invoices to the Fransen customer accomplices had been paid.

19. It was a further object of the conspiracy to cause FRANSEN to sign false audit confirmations on behalf of WSC to conceal the fact that Suprema had recorded false and fictitious sales and accounts receivable on Suprema's books and records, as well as in documents submitted to the bank(s), the SEC and the investing public.

#### **Means and Methods of the Conspiracy**

20. Among the means and methods employed by defendant LAWRENCE FRANSEN and his co-conspirators to carry out the conspiracy were those set forth in paragraphs 21 through 36 below.

#### **Creation of Fictitious Sales**

21. From approximately 2000 through approximately January 2002, officers and/or employees at Suprema created fraudulent documents, including purchase orders, invoices and bills of lading, purportedly evidencing sales to the Fransen customer accomplices, which sales either never took place, or took place for substantially less than the amounts reflected on the documents. Employees of Suprema, at the direction of and with the participation of Suprema management, created false purchase orders to make it appear as if the Fransen customer

accomplices, who had agreed to participate in the fraudulent scheme, had ordered product from Suprema. Employees at Suprema subsequently created, and signed, bills of lading, and other documents, to make it appear as if the product purportedly ordered by the Fransen customer accomplices had been shipped. The creation of a false bill of lading resulted in the creation of a false invoice, which was sent – usually by U.S. mail – to the respective customer accomplice purportedly seeking payment for the fictitious shipment of product. The creation of a fraudulent invoice caused a false sale and corresponding false account receivable to be entered on the books and records of Suprema, which consequently led to an overstatement of revenue and assets in Suprema's financial statements.

22. The coconspirators submitted documents reflecting the inflated sales and accounts receivable to the bank(s) in order to obtain money from the bank(s) pursuant to the revolving loan agreements.

### **Fraudulent Circular Transactions**

23. To conceal their fraud, the coconspirators devised a sophisticated scheme to make it appear that payment on the fraudulent invoices had been received. Because the sales were fictitious or severely inflated, defendant FRANSEN and the Fransen customer accomplices were not going to – or could not afford to – pay the invoices sent by Suprema using their own money. Accordingly, the coconspirators at Suprema devised a way to provide FRANSEN and the Fransen customer accomplices with money which they could use to appear to pay Suprema's fraudulent invoices. They did that generally by having the related companies generate and send fraudulent invoices, and often bills of lading, to Suprema, purportedly evidencing sales and shipments of product from those related companies to Suprema; in fact, these sales and

shipments never took place. Suprema sent the related companies checks, often by Federal Express, in purported payment of those fraudulent invoices. Drawing on monies from the checks Suprema had sent the related companies, defendant FRANSEN subsequently sent checks, or caused checks to be sent, to Suprema, also often by Federal Express, to pay Suprema's fraudulent invoices to WSC.

24. These fraudulent circular paper transactions resulted in a flow of funds from Suprema to the related companies and from the Fransen customer accomplices back to Suprema. Typically, checks were sent from Suprema to the related companies in amounts greater than the corresponding checks sent from the Fransen customer accomplices to Suprema. The difference in the checks usually represented the commission of the Fransen customer accomplices and/or the related companies for participating in the fraudulent scheme. Funds for the checks sent by Suprema to the related companies were drawn on Suprema's line of credit, which increased as Suprema's accounts receivable grew.

25. Between approximately 2000 and approximately January 2002, Suprema recorded more than \$35 million in sales to the Fransen customer accomplices on its books and records. Most, if not all, of the sales on Suprema's books and records from the Fransen customer accomplices were fabricated by defendant FRANSEN and his coconspirators.

#### **False Representations to the Bank(s)**

26. At various times relevant to this Information, the coconspirators at Suprema submitted fraudulent Borrowing Base Certificates, and fraudulent accounts receivable aging reports, which included the fabricated sales to the Fransen customer accomplices, to the bank(s) to obtain more money from the bank(s) under the revolving loan agreements than Suprema was

entitled to borrow. The Borrowing Base Certificates, which were certified as true and accurate usually by Suprema's CFO, as well as the aging reports, were false in that they included the fictitious sales to the Fransen customer accomplices.

27. At various times relevant to this Information, the coconspirators at Suprema regularly sent, or caused to be sent, Borrowing Notices to the bank(s) seeking funds pursuant to the revolving loan agreement, knowing that, among other things, the accounts receivable against which Suprema was seeking to borrow had been fraudulently inflated.

28. At various times relevant to this Information, the coconspirators at Suprema further falsely represented to the bank(s) that Suprema's financial statements were true and accurate in all material respects and that they had been prepared in accordance with GAAP, knowing that Suprema's financial statements included bogus sales and inflated assets.

#### **False Statements in Suprema's Annual and Quarterly Filings**

29. At various times relevant to this Information, Suprema, pursuant to its obligations under the federal securities laws and regulations, filed with the SEC quarterly reports on Form 10-Q and annual reports on Form 10-K, in which it detailed, among other things, the purported results of its business operations, its financial condition and performance and its business practices. Each of these filings incorporated Suprema's financial statements and contained material misstatements regarding Suprema's financial condition, its business practices and its past financial performance, among other things (these SEC filings are hereinafter referred to collectively as "the Financial Statements"). Suprema and its executive officers also disseminated false financial information to members of the investing public in Company press releases and in statements made to securities industry analysts. As set forth above and below,

Suprema's statements to the SEC, to its bank(s), to Suprema's auditors, and to members of the investing public were riddled with misrepresentations as part of a concerted and purposeful effort by officers at Suprema and others to mislead the bank(s) and the investing public into believing the Company was a vibrant and rapidly growing concern.

30. Through the fraudulent conduct described above, the coconspirators caused Suprema to report millions of dollars in fraudulently inflated sales to the Fransen customer accomplices between at least approximately 2000 and September 2001. The Financial Statements included false information concerning Suprema's accounts receivable, net sales and total assets, among other things. These false statements in the Financial Statements presented a materially false and misleading picture of Suprema's true financial and business condition, thereby operating as a fraud and deceit upon investors in Suprema's common stock.

31. The Financial Statements also falsely stated, among other things, that they presented fairly Suprema's financial position and results of operations, that they had been prepared pursuant to the rules and regulations of the SEC and in accordance with GAAP, and that sales of cheese products were not recognized until the products were shipped.

#### **False Statements in Suprema's Registration Statements**

32. In or about August 2000, and September, October and November 2001, officers of Suprema caused Suprema to file with the SEC registration statements, and amendments thereto, in connection with two secondary offerings of common stock for sale to the public (the "Registration Statements"). The Registration Statements described the Company's business and included financial statements for several years prior to the respective offering of stock.

33. In or about August 2000 and November 2001, the SEC declared Suprema's Registration Statements effective, which allowed the respective secondary offerings to occur. In the August 2000 secondary offering, Suprema sold 1,100,000 shares of its common stock to members of the public at a cost of \$8.00 a share, resulting in total proceeds to Suprema, after the deduction of underwriting fees and commissions, of \$8,096,000. In the November 2001 secondary offering, Suprema sold 3,500,000 shares of common stock at \$12.75 a share, yielding total proceeds to Suprema, after the deduction of underwriting fees and commissions, of \$41,510,000.

34. The Registration Statements filed with the SEC in 2000 and 2001 falsely reported Suprema's accounts receivable, total net sales and total assets, among other things. As the coconspirators well knew, the accounts receivable, sales and total assets contained in the Registration Statements were substantially overstated because of the fraudulent practices described above.

#### **The Impact on the Price of Suprema's Common Stock**

35. As a result of the false and misleading statements made by Suprema concerning its business and financial condition, its past financial performance, and its business practices, the price of Suprema's common stock was inflated artificially. In or about August 2000, when Suprema conducted a secondary offering of Suprema common stock, the stock was offered at approximately \$8.00 per share. By November 2001, when Suprema had another offering of stock, Suprema's common stock was offered at \$12.75 per share. By December 2001, just prior to NASDAQ's suspension of trading of Suprema stock, Suprema's common stock was trading as high as approximately \$14.00 per share.

### **The False Audit Confirmations**

36. In the course of that annual audit of Suprema's financial statements, officers and employees of Suprema directed FRANSEN, on behalf of WSC, to submit false audit confirmations to BDO, Suprema's auditors. The audit confirmations sought verification by WSC that legitimate sales had occurred and that the amounts reflected on Suprema's financial statements as receivables were in fact due and owing by WSC. As defendant FRANSEN and his coconspirators well knew, the sales and receivables figures set forth on the audit confirmations for WSC were false. Defendant FRANSEN signed the false audit confirmations to conceal the fact that Suprema had recorded false and fictitious sales and accounts receivables from WSC on its books and records and consequently in its financial statements.

### **Overt Acts**

37. In furtherance of the conspiracy and to effect its unlawful objects, defendant LAWRENCE FRANSEN and others not named as defendants herein committed the following overt acts, among others, in the District of Jersey and elsewhere:

- a. On or about July 13, 2000, defendant LAWRENCE FRANSEN signed a false audit confirmation letter on behalf of WSC.
- b. On or about August 1, 2000, defendant LAWRENCE FRANSEN created, or caused the creation of, an invoice, number 10346, from WSC to LNN for a non-existent sale of 40,500 pounds of romano powder for \$170,505.
- c. On or about August 1, 2000, defendant LAWRENCE FRANSEN created, or caused the creation of, an invoice from LNN to Suprema for a non-existent sale of 40,000 pounds of parmesan powder for \$170,000.
- d. On or about August 15, 2000, defendant LAWRENCE FRANSEN issued, or caused the issuance, of a check from LNN to WSC for \$170,505 in payment of invoice number 10346.
- e. On or about August 16, 2000, defendant LAWRENCE FRANSEN deposited, or caused the deposit, of a check from Suprema in the amount of \$170,000 in payment of a fraudulent LNN invoice.
- f. On or about July 10, 2001, defendant LAWRENCE FRANSEN signed a false audit confirmation on behalf of WSC.



g. On or about September 4, 2001, defendant LAWRENCE FRANSEN created, or caused the creation of, a fraudulent invoice for a non-existent sale from WSC to LNN of 43,217 pounds of parmesan powder at a cost of \$176,757.60.

h. On or about September 5, 2001, defendant LAWRENCE FRANSEN, created, or caused the creation of, a fraudulent invoice from LNN to Suprema for a non-existent sale of 43,831 pounds of parmesan powder to Suprema for \$179,707.10.

i. On or about September 5, 2001, defendant LAWRENCE FRANSEN created, or caused the creation of, a fraudulent bill of lading for a non-existent shipment of 43,831 pounds of parmesan powder from LNN to Suprema.

j. On or about November 26, 2001, defendant LAWRENCE FRANSEN deposited, or caused the deposit of, a check from Suprema purportedly in payment of two invoices from LNN for \$357,265.80.

k. On or about January 7, 2002, defendant LAWRENCE FRANSEN created, or caused the creation of, an invoice from WSC to LNN for a non-existent sale to LNN of 43,124 pounds of parmesan powder at a cost of \$176,377.16.

l. On or about January 8, 2002, defendant LAWRENCE FRANSEN created, or caused the creation of, a fraudulent invoice from LNN to Suprema for a non-existent sale of 43,316 pounds of parmesan powder for \$177,595.60.

m. On or about January 8, 2002, defendant LAWRENCE FRANSEN created, or caused the creation of, a fraudulent bill of lading for a non-existent shipment of 43,316 pounds of parmesan powder from LNN to Suprema.

n. On or about January 21, 2002, defendant LAWRENCE FRANSEN faxed or caused a fax to be sent to an employee of Suprema in California.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

(Securities Fraud)

38. The allegations contained in paragraphs 1 through 15 and 21 through 36 of Count One of this Information are hereby realleged as if set forth at length herein.

39. Between in or about 2000 and in or about January 2002, in the District of New Jersey and elsewhere, defendant

**LAWRENCE FRANSEN**

did knowingly and willfully, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, use and employ devices, schemes and artifices to defraud, make untrue statements of material fact and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engage in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons in connection with the purchase and sale of Suprema securities.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

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CHRISTOPHER J. CHRISTIE  
United States Attorney